



December 28, 2001

Ms. Ann-Marie P. Sheely
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR2001-6118

Dear Ms. Sheely:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156616.

Travis County, Texas (the "county") received a request for "a list of all County employees which includes the following information for each: Name, Address (as available), Home Phone (as available), Work phone, Department, Division, Title, Salary, Date of Hire, Date of Birth, Labor Union Deduction & to Whom, Deferred Compensation Amount, Number of Dependents, Race/Ethnicity, Sex, Insurance Deductions." You state that you will be releasing a number of records which will include "names of Travis County employees, information regarding their salaries, titles, departments, work phone, dates of hire, dates of birth, information regarding race and sex, and addresses and home telephone numbers for those employees who choose not to keep that information confidential." You claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You contend that the social security numbers, home addresses, home telephone numbers, and family member information of certain employees must be withheld under section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure information that relates to the home addresses, home telephone numbers, social security numbers and family

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

member information of current or former employees of a governmental body. Section 552.117(1) information must be withheld only if the employee elected to keep this information confidential pursuant to section 552.024 prior to the date on which the county received the request. *See* Open Records Decision No. 622 (1994) (providing that election must be made prior to date request received for each piece of information). However, this information may not be withheld if the current or former employee made the request for confidentiality under section 552.024 *after* the request for information at issue was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have not shown when each of these employees made the election under section 552.024. Therefore, the county is required to withhold the home addresses, home telephone numbers, social security numbers, and family information from disclosure under section 552.117 *only if* the employee requested confidentiality under section 552.024 before the request for information at issue was made. We agree with the county's markings of section 552.117 information in the "Demographic Information" document.

For employees who have not timely elected to keep their section 552.117 information confidential, it should be noted that social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have cited no law, nor are

Finally, you contend that portions of the requested information pertaining to county employees includes private financial information which is confidential under section 552.101. Section 552.101 excepts from disclosure information that is protected by the common law right of privacy. Gov't Code § 552.101; *see also Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with common law privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) there is no legitimate public interest in its disclosure. *Indus. Found.*, 540 S.W.2d at 685. Prior decisions of this office have found that financial information relating only to an individual and not involving a transaction with a governmental body ordinarily satisfies the first requirement of the test for common law privacy. However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee's allocation of his or her salary to a voluntary investment program offered by his or her employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy. ORD 600 (TexFlex benefits), 545 (deferred compensation plan). Likewise, an employee's allocation of his or her salary toward membership dues in a union is confidential. However, the salary of a public employee and an employee's participation in an insurance program funded wholly or partially by the state are not excepted from disclosure. Open Records Decision Nos. 600 (1992), 342 (1982). Therefore, only the details of payroll-related transactions that were funded entirely by the employee qualify as personal financial information excepted from disclosure under section 552.101 and common law privacy. Information regarding an employee's optional insurance coverage, dependent information, and designation of life insurance beneficiary is excepted by common law privacy. ORD 600 (1992).

Turning to the information requested, the information highlighted in the "Travis County Check Detail" which shows labor union deduction information, deferred compensation amounts, and optional deductions is private and must be withheld. You inform us that because the county pays for health insurance, no deductions are taken for such insurance.² A completed life and disability form is private in its entirety and must be withheld. We agree that you must withhold the portions of the completed Medical and Dental form to the extent you have highlighted the private portions of the form. Furthermore, portions of the "Travis County Check Detail," which you highlighted in pink, are not responsive to the request. This includes information on retirement withholding, FSA/Unreimbursed Medical withholding, federal withholding, savings withholdings, and charitable deductions. The county need not release this nonresponsive information to the requestor.

²We note that some information on the "Travis County Check Detail" has been blacked out prior to submission to our office. It is important that all information be submitted to our office without redaction so that we can make an accurate determination as to its availability to the public. We note here that employee names are public information in this matter and may not be withheld.

You have also submitted a W-4 form as a representative sample. Title 26 section 6103(a) of the United States Code renders tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989). Our office has specifically held that W-4 Forms must be withheld in their entirety. Open Records Decision No. 600 at 9 (1992). Therefore, you must withhold W-4 Forms from disclosure as well as federal withholding information listed on employees' "check detail" as submitted in the representative sample.

In summary, the county must withhold home addresses, home telephone numbers, and family member information for employees who timely elected to withhold such information in accordance with section 552.117(1) of the Government Code. Social security numbers must be withheld where the employee timely elected to withhold such information or where the social security number is obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. Home addresses, home telephone numbers, social security numbers and family member information of peace officers must be withheld pursuant to section 552.117(2) of the Government Code. Any financial information which relates only to an individual must be withheld in accordance with section 552.101 of the Government Code in conjunction with common law privacy. And finally, employees' W-4 forms must be withheld as per section 6103(a) of title 26 of the United States Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

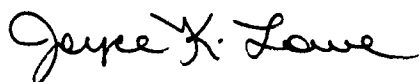
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/seg

Ref: ID# 156616

Enc: Submitted documents

c: Mr. Greg Powell
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(w/o enclosures)